THE "WIGWAM"; INTER MARITIME SHIPPING (PTE.) LTD. v. M.V. "WIGWAM", OWNERS OF

[O.C.J. (Chua J.) November 19, 1982]

[Singapore – Motion in Admiralty in Rem No. 798 of 1980]

Shipping Law – Arrest of ship – Motion to set aside – Motion denied – Scope of the High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 3(1)(l) & (m).

The plaintiffs took out a writ against the owners of m.v. Wigwam for $1,513,671.72 being for goods and materials supplied to the defendants' vessels "Wigwam" and "Wabasha" during the period between May 17, 1980 and June 30, 1981. The "Wigwam" was arrested on the application of the plaintiffs and on July 14, 1981, the owners of "Wigwam" entered conditional appearance. They sought to set aside the Writ *in Rem* and the Warrant of Arrest directed against their vessel.

Held, dismissing the defendants' motion: (1) the plaintiffs claimed under section 3(1)(l) and (m) of the High Court (Admiralty Jurisdiction) Act (Cap. 6). Before a plaintiff can proceed *in rem* in respect of a claim under the said section 3(1)(l) or (m), he need not prove at the outset that he has a cause of action substantial in law;

(2) there were numerous conflicting evidence and a number of difficult points in this case. The conflicting evidence could only be resolved after a full hearing of the case. The plaintiffs were therefore entitled to bring the action and to have it tried and that, whether or not their claim turns out to be a good one, they were entitled to assert that claim by proceeding *in rem*.

Case referred to:

(1) *Schwarz & Co. (Grain) Ltd.* v. *"St. Elefterio" (Owners)* [1957] 1 Lloyd's Rep. 283

CIVIL SUIT.

Loh Boon Huat for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs are shipping agents and managers and operators carrying on business in the port of Singapore. They took out a writ *in rem* against The Owners of the ship or vessel "WIGWAM" claiming the sum of $1,513,671.72 for goods and materials supplied to the defendants' vessel "WIGWAM" and "WABASHA" for their operation and maintenance during the period the two vessels were in Singapore between May 17, 1980, and June 30, 1981, and for disbursements incurred on account of the said vessels at the request and/or to the order of the defendants, their servants or agents, and agency fees. The said two vessels are oil storage barges with no power of their own and could only be towed.

The "WIGWAM" was arrested on the application of the plaintiffs and on July 14, 1981; the owners of the "WIGWAM", P.T. Krakatau Steel, an Indonesian Company in Jakarta (the defendants), entered conditional appearance.

On July 28, 1981, the defendants filed a motion to set aside the Writ *in Rem* and the Warrant of arrest directed against their vessel the "WIGWAM".

The short facts as deposed to in the affidavits filed on behalf of the defendants are these. In November, 1979, the defendants purchased from Pertamina twenty-three vessels which included the "WIGWAM" and the "WABASHA". These vessels were to be broken up for scrap. In February, 1980, the "WIGWAM" was delivered to the defendants. Before the vessel could be broken up for scrap, certain works had to be done, including the cleaning of the tanks and gas-freeing. By an agreement dated January 21, 1980, made between the defendants and P.T. Werkudara Sakti of Jakarta (the Work Agreement) the latter (Sakti) contracted on a lump sum basis to carry out certain works on the "WIGWAM" and the "WABASHA" which included the towing of the vessels to the defendants' harbour at Cigading, West-Java, and the cleaning of the tanks of the vessels. On February 7, 1980, Sakti entered into an agreement with P.T. EMKL Fajar Kemenangan (EMKL) of Jakarta by which Sakti sub-contracted to EMKL the work contemplated by the Work Agreement. The "WIGWAM" and the "WABASHA" were taken to Singapore in May, 1980. By a letter dated May 16, 1980, headed "AGENCY APPOINTMENT" and signed by EMKL, (the Agency Agreement), the plaintiffs were appointed agents for, *inter alia*, the "WIGWAM" and the "WABASHA" for which the plaintiffs would be paid agency fees, all disbursements and costs of repairs.

The defendants say that the sub-contract agreement entered into by Sakti with EMKL was entered into without their prior knowledge or consent and that the two vessels were taken by EMKL to Singapore without their prior knowledge or consent. The submission of the defendants is that the plaintiffs were the agents of EMKL and not their agents and that EMKL contracted with the plaintiffs as principals and for their own account. In

the circumstances the defendants say they are not the party liable to the plaintiffs *in personam* in respect of the plaintiffs' claim as required by section 4(4) of the High Court (Admiralty Jurisdiction) Act, Cap. 6 (the Act).

The contentions of the plaintiffs are that the Agency Agreement was entered into by EMKL acting as agents for and on behalf of the defendants and that "Further or in the alternative, the defendants knew at all material times that the operation and maintenance of the said barges in Singapore were being done at the expense of the Plaintiffs and acquiesced in its being done, taking the benefit of it when done, with the expectation that the Defendants will pay for the same or with their implied agreement to pay the Plaintiffs the expenses so incurred and for the services so rendered." (para 3 of the Statement of Claim).

The plaintiffs in support of their contentions deposed in affidavits:

(1) that prior to May, 1980, one Mahmuddin of EMKL and one Danny Sunanja, both acting on behalf of the defendants, had discussions with Willie Loh Kum Yong, the Managing Director of the plaintiffs, for the appointment of the plaintiffs to be the agents for the "WIGWAM" and the "WABASHA",

(2) that on or about August 17, 1980, representatives of Pertamina and the defendants were in Singapore and boarded the "WIGWAM" and the "WABASHA". They met the plaintiffs' employees and agents and knew that the plaintiffs had been engaged to act as agents of the defendants in respect of the "WIGWAM" and the "WABASHA".

(3) that in pursuance of the said appointment, the plaintiffs rendered services to and incurred disbursements for the account and benefit of the "WIGWAM" and the "WABASHA" and that the bills in respect of these disbursements and charges for the period from May 17, 1980, until July 4, 1981, amounted to $1,533,205.52. Copies of the bills in respect of these disbursements and charges were, at the request of EMKL, addressed to EMKL who undertook, and, to the best of plaintiffs' information and belief, did give copies to the defendants,

(4) that when the defendants failed to pay the bills, meetings were arranged with the directors of the defendants in Jakarta through one Buddy Ibrahim of Jakarta. During these meetings in November and December, 1981, the defendants' representatives did not deny that they were liable to the plaintiffs for the payment of the bills submitted by the plaintiffs to EMKL for and on behalf of the defendants. The defendants knew very well that the plaintiffs were claiming against them for all these disbursements and charges which the plaintiffs incurred as their agents in Singapore. They did not at any time deny that EMKL were authorised to contract on their behalf with the plaintiffs or were their agents when EMKL appointed the plaintiffs as agents of the vessels. On the contrary, the defendants requested the plaintiffs not to enforce their claims against the vessels at Singapore, and the defendants undertook to pay. On this assurance the plaintiffs did not proceed with their intended actions against the "WIGWAM" and the "WABASHA" in 1981 and continued to render services to and incurred disbursements for the account and benefit of the defendants and their two vessels until the oil/sludge was sold and removed from the two vessels,

(5) that it is not true and correct that the defendants did not know what the plaintiffs were doing in Singapore or that they were acting as agents for the two vessels and on behalf of the defendants. The plaintiffs did not agree, and would not have agreed, to contract with EMKL in their personal capacity. The defendants knew at all material times that the plaintiffs were acting as their agents and allowed the plaintiffs to carry on so acting and incurring the disbursements and other charges in respect of and for the benefit of the two vessels, knowing fully well the plaintiffs expected the defendants to pay the plaintiffs' bills and had in fact undertaken, both expressly and by their conduct, to pay the disbursements and charges of the plaintiffs,

(6) that the writ in this action was served on the "WIGWAM", which was arrested, only after it became apparent to the plaintiffs that the defendants had no intention of honouring their contractual obligations when they hijacked the "WABASHA" and towed her out of the control of the plaintiffs at 0220 hrs on July 2, 1981.

In their affidavits the defendants depose the following:—

(1) They admitted that on October 24, 1980, the representatives of the defendants, Pertamina, and Sakti came to Singapore and inspected the "WIGWAM" and the "WABASHA". There were only three or four Malay seamen around and they were employees of Sakti. There were no representive of the plaintiffs present during the inspection. The defendants explained the reason for their inspection of the vessels. They had received no progress reports from Sakti with regard to the work to

be performed by Sakti and as the vessels had failed to show up at Cigading by October, 1980, the defendants made investigations. Sakti informed them that the vessels were in Singapore. The defendants requested Pertamina to send a technical expert to accompany their representative to Singapore to help out with any technical problems concerning the said vessels.

(2) In October, 1980, there was a meeting between the representative of the plaintiffs and the defendants' representative during which the plaintiffs asked the defendants to pay the plaintiffs' bills but the plaintiffs were told that the defendants had had no dealings with them.

(3) They had no knowledge of the appointment of the plaintiffs as defendants' agents and that under no circumstances did they approve the alleged appointment of the plaintiffs as such agents.

(4) They did not know anything about the hijacking of the "WABASHA".

The defendants also filed an affidavit by the President Director of EMKL who deposed that the defendants did not at any time enter into any contract, express or implied, with the plaintiffs for the supply of goods and materials. Neither did the defendants at any time appoint the plaintiffs as agents of the two vessels. In fact, the goods and materials were supplied and the agency services were rendered at the request of EMKL and pursuant to the Agency Agreement.

Counsel for the defendants submits that it is clear, from the affidavit evidence the defendants have adduced, that the plaintiffs have no cause of action against the defendants and that they do not have any maritime lien on the "WIGWAM" and the action can therefore be halted *in limine.*

I respectfully agree with the views taken by Willmer J. in *Schwarz & Co. (Grain), Ltd.* v. *"St. Elefterio" (Owners),*[1] of the construction of section 3(4) of the Administration of Justice Act, 1956, (which is *in pari materia* with section 4(4) of the Act.)

The plaintiffs are claiming under section 3(1)(*l*) and (m) of the Act. Before a plaintiff can proceed *in rem* in respect of a claim under section 3(1)(*l*) or (m) of the Act he need not prove at the outset that he has a cause of action substantial in law.

It has not been suggested that these proceedings are frivolous or vexatious, so as to call for the exercise of the court's inherent jurisdiction to halt such proceedings *in limine.*

There are numerous conflicting evidence disclosed in the affidavits filed on behalf of the plaintiffs and that filed on behalf of the defendants and there are a number of difficult points of law raised. In my view the conflicting evidence can only be resolved after a full hearing of the case when witnesses on both sides have been cross-examined and the difficult points of law can only be decided after full argument and mature consideration by the court. I am of the view that the plaintiffs are entitled to bring this action and to have it tried and that, whether or not their claim turns out to be a good one, they are entitled to assert that claim by proceeding *in rem.*

The motion is dismissed with costs.

Order accordingly.

Solicitors: *Godwin & Co.; Rodyk & Davidson.*